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1 Dep't of Social & Health Services, PAB No. D94-135 (1995), aff'd, Thurston Co. Super. Ct. No.
2 95-2-03516-4; Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of
3 Social & Health Services, PAB No. D93-053 (1994).

4 5 **II. FINDINGS OF FACT**

6 2.1 Appellant Kirke Lisi was a Fish and Wildlife Officer 3 and permanent employee of
7 Respondent Department of Fish and Wildlife (F&W). Appellant and Respondent are subject to
8 Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC.
9 Appellant filed a timely appeal on April 6, 2001.

10
11 2.2 Appellant was employed with F&W as a Fish and Wildlife Officer 3 for 12 years. Prior to
12 the incidents giving rise to this appeal, Appellant was a good employee with no previous record of
13 formal disciplinary action.

14
15 2.3 As a Fish and Wildlife Officer 3, Appellant was a fully commissioned law enforcement
16 officer and was responsible for enforcing the laws of Washington State, particularly the fish and
17 wildlife laws. Appellant had authority to arrest individuals who violated any Washington State
18 laws.

19
20 2.4 Appellant was aware of his responsibility to abide by the F&W's Rules of Conduct for law
21 enforcement officers, which state, in part:

22 Employees shall maintain a level of moral conduct in their personal and business
23 affairs, which equates with the high ethical standards expected by the public of law
24 enforcement agencies and personnel.

25 Employees shall not engage in conduct which:

- 26 1. Impedes the ability of the department of effectively fulfill its responsibilities.
2. Causes a lessening of public confidence in the ability of the department to perform its functions.

3. Causes an adverse effect of the discipline or efficiency of the department.
4. Impairs their ability to perform their job.
5. Constitutes a conflict of interest as prohibited by law or department policy.

2.5 When Appellant took his oath of office, he signed a document affirming his responsibility to uphold the law and abide by the Law Enforcement Code of Ethics. The Law Enforcement Code of Ethics states, in part:

As a law enforcement officer, my fundamental duty is to serve the community

I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or to my agency. . . . Honest in thought and deed both in my personal and official life, I will be exemplary in obeying the law and the regulations of my department. . . .

2.6 In early October 2000, Appellant accompanied a co-worker, Brooks Carmichael, on a hunting trip to Montana State. They were planning to hunt pronghorn antelope and upland birds. Mr. Carmichael was an experienced game hunter while Appellant was an experienced bird hunter. Mr. Carmichael took responsibility to secure the appropriate hunting tags and permits for both he and Appellant. They both had either sex and doe/fawn permits which allowed them to kill two animals each.

2.7 On October 8, 2000, Appellant shot and killed a pronghorn buck. On October 9, 2000, Appellant shot and killed what he thought was a pronghorn doe. However, when he approached the carcass to field dress the animal, Appellant saw that it was a buck. Appellant realized that he had left his knife at camp and was unable to field dress the animal. He covered the carcass with sagebrush and left it in the field. Appellant returned to Mr. Carmichael's truck and attempted to contact Mr. Carmichael by radio for assistance. When Appellant later returned to the area to retrieve the carcass, he was unable to locate it.

1 2.8 On October 10, 2000, a Montana state game warden came to Appellant and Mr.
2 Carmichael's hunting camp to address a problem with their upland bird licenses. Appellant did not
3 tell the game warden that he had mistakenly shot a second buck.

4
5 2.9 On October 11, 2000, Appellant attempted to shoot another pronghorn doe. He shot at an
6 animal but missed it. On the afternoon of October 12, Appellant and Mr. Carmichael broke camp
7 and began the return trip home.

8
9 2.10 On October 20, 2000, Mr. Carmichael telephoned Montana wildlife enforcement officials
10 and reported that Appellant had violated the game laws.

11
12 2.11 On October 25, 2000, Appellant was contacted by telephone by the Montana game warden
13 investigating the incident. Initially, Appellant denied knowledge of the abandoned antelope and
14 suggested that there were other hunters in the area. Later during the conversation, Appellant
15 admitted his involvement in the incident. Following his conversation with the Montana game
16 warden, Appellant reported the incident to Bruce Bjork, Chief of Respondent's Enforcement
17 Division.

18
19 2.12 Chief Bjork conveyed to Captain Bill Hebner the information he received about the incident.
20 Captain Hebner initiated an investigation and determined that PCRs should be initiated against
21 Appellant and Mr. Carmichael. On November 13, 2000, a PCR was initiated against Appellant.
22 Captain Hebner conducted the PCR investigation and on December 26, 2000, he completed his
23 report.

1 2.13 Captain Hebner's report alleged that Appellant violated Montana state law by shooting the
2 second pronghorn buck, abandoning/wasting the second pronghorn, and attempting to exceed the
3 Montana bag limit by attempting to shoot a doe after killing the second buck.

4
5 2.14 Chief Bjork reviewed Captain Hebner's report and concluded that the alleged misconduct
6 occurred. Chief Bjork also concluded that Appellant was untruthful when he did not report his
7 game violation to appropriate Montana authorities and was initially untruthful when Montana
8 officers questioned him about the incident.

9
10 2.15 Before determining the level of discipline to impose, Chief Bjork reviewed the investigation
11 file, discussed the matter with agency personnel staff and command staff, and considered
12 Appellant's employment history. Chief Bjork determined that Appellant was a seasoned F&W
13 enforcement officer, that he knew he had violated Montana state law, that he had numerous
14 opportunities to report the incident to Montana officials, and that he failed to do the right thing and
15 report the incident. Chief Bjork concluded that Appellant violated the code of conduct, failed to
16 fulfill his oath of office, violated the trust placed in him by the agency and the public, and harmed
17 his ability to represent the agency and credibly testify in court.

18
19 2.16 After considering the available levels of discipline, Chief Bjork determined that dismissal
20 was appropriate. By letter dated April 3, 2001, Chief Bjork notified Appellant of his dismissal
21 effective April 18, 2001 for neglect of duty, malfeasance, gross misconduct, and willful violation of
22 agency rules and regulations.

23
24 2.17 Appellant admits that he mistakenly shot and killed one more pronghorn buck than he had a
25 tag for and that he was unable to locate the animal, and therefore, left it in the field. Appellant
26 admits that his actions violated Montana state game laws. On October 25, 2000, Appellant was

1 issued a criminal citation from Montana Fish, Wildlife and Parks for wastage/abandonment of game
2 in the field. Rather than returning to Montana to appear in court, Appellant paid a \$520.00 fine.

4 **III. ARGUMENTS OF THE PARTIES**

5 3.1 Respondent argues that Appellant irreparably harmed the agency's ability to trust him to
6 enforce the fish and wildlife laws of Washington and irreparably harmed his ability to credibly
7 testify in a court of law. Respondent contends that as a law enforcement officer, Appellant's
8 conduct must be above reproach and asserts that his misconduct in this case shows that he can no
9 longer effectively perform the duties of a F&W enforcement officer. Respondent asserts that
10 Appellant failed to act consistent with his duty to comply with the law, which destroyed his
11 credibility with the public and with F&W. Respondent contends that Appellant committed
12 malfeasance when he violated the public trust, committed a criminal act, and violated the rules of
13 ethical conduct and his oath of office. Respondent asserts that Appellant can no longer function as
14 a F&W enforcement officer and that dismissal was the appropriate disciplinary sanction.

15
16 3.2 Appellant argues that dismissal was excessive and contends that he has received disparate
17 treatment and disproportionate punishment. Appellant asserts that his actions were not intentional
18 and acknowledges that he made a mistake and should have reported his error to the proper
19 authorities. Appellant contends that he is remorseful and asks for an opportunity to try to repair the
20 damage he has done to his career. Appellant contends that the principles of fairness and the
21 integrity of the system warrant that he be given a lesser form of discipline.

22 **IV. CONCLUSIONS OF LAW**

23
24 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
25 herein.

1 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
2 the charges upon which the action was initiated by proving by a preponderance of the credible
3 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
4 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
5 Corrections, PAB No. D82-084 (1983).

6
7 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
8 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
9 of Social & Health Services, PAB No. D86-119 (1987).

10
11 4.4 Malfeasance is the commission of an unlawful act, the act of doing what one ought not to
12 do, or the performance of an action that ought not to be done, that affects, interrupts or interferes
13 with the performance of an official duty. Parramore v. Dep't of Social & Health Services, PAB No.
14 D94-135 (1995), aff'd, Thurston Co. Super. Ct. No. 95-2-03516-4.

15
16 4.5 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
17 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

18
19 4.6 Willful violation of published employing agency or institution or Personnel Resources
20 Board rules or regulations is established by facts showing the existence and publication of the rules
21 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
22 rules or regulations. A willful violation presumes a deliberate act. Skaalheim v. Dep't of Social &
23 Health Services, PAB No. D93-053 (1994).

24
25 4.7 Respondent has met its burden of proof. Appellant neglected his duty, committed
26 malfeasance and violated agency rules and regulations. In addition, Appellant's actions rose to the

1 level of gross misconduct. Appellant's misconduct destroyed his trustworthiness with the agency
2 and his credibility with the public. Furthermore, Appellant's actions irreparably harmed his ability
3 to credibly testify in court and perform the enforcement responsibilities of his position. Appellant
4 was an experienced enforcement officer, he was aware of his responsibility to maintain high ethical
5 standards and abide by the public laws and the regulations of his agency. He knew better than to
6 violate the law, yet he knowingly attempted to withhold information about his inadvertent game
7 violation. Appellant's acts of untruthfulness and withholding of information were egregious and
8 justify his dismissal.

9
10 4.8 The appeal should be denied.

11 **V. ORDER**

12 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Kirke Lisi is denied.

13
14 DATED this _____ day of _____, 2002.

15 WASHINGTON STATE PERSONNEL APPEALS BOARD

16
17 _____
18 Walter T. Hubbard, Chair

19 _____
20 Gerald L. Morgen, Vice Chair